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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,331	04/16/2004	Cynthia Dumas	22406.01	7878

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EXAMINER
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PHAM, HUONG Q

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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01/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/825,331

Applicant(s)

DUMAS ET AL.

Examiner

Huong Q. Pham

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3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 5, 10- 11 are are rejected under 35 U.S.C. 103(a) as being unpatentable over Baxter ( 4,178,924) in view of Silverberg ( 5,063,919), Kling et al( 6,340,782), and Infantino et al ( US 2002/0193728 A1).

Baxter teaches a cover having film 18, 20 having a predefined form, said film formed of a flexible, liquid impervious material, said form defining at least one substantially circular opening ; a first resilient band attached to said film at said circular opening and disposed so as to encircle each of said at least one circular opening; an absorbent medium 34 attached to said film 18, 20.

Silverberg teaches the use of 2 resilient bands 36 for water tight seal: first resilient band 36 ( figure 2) attached to a film at a circular opening and adjacent to and at a predetermined distance from a second resilient band 36 so as to encircle the circular opening.

Kling et al teaches the use of 2 resilient bands 111, 112 for water tight seal: an absorbent medium 103 ( figure 2) disposed only between first and second resilient

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bands 111, 112 and totally occupying the space between the resilient bands to trap moisture in the absorbent pad 103 and to prevent the moisture to escape beyond the resilient bands from the absorbent pad 103.

Infantino et al teaches the use of 2 resilient bands 212 , 144, 142, 150, 146 for water tight seal : absorbent bumpers 410 ( figure 15) ; absorbent pad 214 spanning between elastic members 212 and totally occupying the space between the elastic members 212 ( figure 10) ; and elastic 144, 150, 142, 146 ( figure 6N) with the absorbent pad disposed between the elastic 144, 142 .

In view of the teachings of Silverberg, Kling et al , and Infantino et al , it would have been obvious to one ordinary skill in the art at the time the invention was made to modify and replace the resilient band 40 of Baxter with first and second resilient bands such that the absorbent medium 34 is totally occupying the space between the resilient bands in order to form a water tight seal for the cover.

As for claim 2 , note that layers 18, 20 of Baxter are made of polyethelene.

As for claim 3-5, 10, 11, note that the device of Baxter can be used for protecting a bandage, a cast, a leg, etc.

Claims 6- 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over South et al ( US 2001/0041853) in view of Baxter ( 4,178,924) , Silverberg ( 5,063,919), Kling et al( 6,340,782), and Infantino et al ( US 2002/0193728 A1).

South et al teaches a water tight seal cover for a head ( figure 5), an arm ( figures 3, 8), a leg ( figures 1, 7) , a waist or chest ( figure 4) .

Baxter teaches a cover having film 18, 20 having a first resilient band attached to said film at a circular opening, an absorbent medium 34 attached to said film 18, 20.

Silverberg teaches the use of 2 resilient bands 36 for water tight seal: first resilient band 36 ( figure 2) attached to a film at a circular opening and adjacent to and at a predetermined distance from a second resilient band 36 so as to encircle the circular opening.

Kling et al teaches the use of 2 resilient bands 111, 112 for water tight seal: an absorbent medium 103 ( figure 2) disposed only between first and second resilient bands 111, 112 and totally occupying the space between the resilient bands to trap moisture in the absorbent pad 103 and to prevent the moisture to escape beyond the resilient bands from the absorbent pad 103.

Infantino et al teaches the use of 2 resilient bands 212 , 144, 142, 150, 146 for water tight seal : absorbent bumpers 410 ( figure 15) ; absorbent pad 214 spanning between elastic members 212 and totally occupying the space between the elastic members 212 ( figure 10) ; and elastic 144, 150, 142, 146 ( figure 6N) with the absorbent pad disposed between the elastic 144,142 .

In view of the teachings of Baxter, Silverberg, Kling et al, and Infantino et al , it would have been obvious to one ordinary skill in the art at the time the invention was made to modify and provide the cover device of South et al with first and second resilient bands and an absorbent medium in between the resilient bands , such that the

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absorbent medium is totally occupying the space between the resilient bands in order to form a water tight seal for the cover.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baxter ( 4,178,924 ) , in view of Silverberg ( 5,063,919 ), Kling et al( 6,340,782 ), and Infantino et al ( US 2002/0193728 A1 ), and further in view of Baychar ( 6,981,341 ).

Note the comments above for the teachings of Baxter, Silverberg, Kling et al , and Infantino et al .

Baychar teaches a waterproof moisture transfer composite with absorbent material comprising waterproof outer layer 70 ( figure 4 ) , a first layer 10 for wicking moisture, a second layer 30, 20, 40 50, etc. for entrapping the wicked moisture.

In view of the teaching of Baychar , it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the waterproof protector of Baxter with an absorbent medium having a first wicking layer and a second entrapping moisture layer in order to wick moisture away from a wearer skin and to absorb the moisture.

As for claim 17, note that the absorbent layer 34 of Baxter is a silica gel material ( column 3, lines 5-10 ).

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Note the comments relative to the claims above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 8:45 AM - 5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on ( 571) 272 - 4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 10, 2008

*Patricia Bianco*

*Bianco*  
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*1/28/08*